

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 VICTOR BERRELLEZA-LEAL, *et al.*,

13 Defendants.

NO. CR12-62RSL

ORDER DENYING DEFENDANTS'
MOTIONS TO SUPPRESS

14 I. INTRODUCTION

15 This matter comes before the Court on defendant Richard Anthony Ortiz's "Motion for
16 Order Suppressing Wiretap Evidence or, Alternatively Setting Evidentiary Hearing Pursuant to
17 Franks v. Delaware" (Dkt. # 531), defendant Victor Berrelleza-Verduzco's "Motion to Suppress
18 Intercepted Wire Communications and in the Alternative, for Franks Hearing" (Dkt. # 584) and
19 "Motion and Memorandum Re: Suppression of Intercepted Wire Communications for Lack of
20 Probable Cause" (Dkt. # 768),¹ defendant Enrique Magana-Guzman's "Motion to Suppress
21 Wiretap Evidence and for Evidentiary Hearing Pursuant to Franks v. Delaware" (Dkt. # 658),
22 defendant Juan Carlos Lugo-Acosta's "Motion to Suppress Intercepted Wire Communications
23 and Request for a Franks Hearing" (Dkt. # 760), and defendant Cristian Berrelleza-Verduzco's

24
25 ¹ Defendants Juan Carlos Lugo-Acosta (Dkt. # 760) and Victor-Berrelleza-Verduzco (Dkt. #
26 768) filed their motions to suppress after the court heard oral argument on the other motions to suppress
27 intercepted communications on March 28, 2013. Because defendants' motions present arguments nearly
28 identical to those presented by other defendants at the hearing, the Court finds these motions suitable for
decision on the papers submitted and therefore, DENIES defendants' requests for oral argument.
ORDER DENYING DEFENDANTS'
MOTIONS TO SUPPRESS - 1

1 “Motion and Memorandum to Suppress Evidence Obtained by Unlawful Interception of
2 Telephonic Communications” (Dkt. # 771).² Defendants contend that, in seeking the wiretap
3 orders, the government failed to provide “a full and complete statement as to whether or not
4 other investigative procedures have been tried and failed or why they reasonably appear to be
5 unlikely to succeed if tried or to be too dangerous,” 18 U.S.C. § 2518(1)(c), both generally and
6 with respect to the individual defendants whose phone lines the government sought to intercept.

7 Defendants further contend that the affidavits supporting the wiretap orders omitted
8 material information and thus, defendants are entitled to an evidentiary hearing under Franks v.
9 Delaware, 438 U.S. 154 (1978). The Court heard oral argument on March 28, 2013. For the
10 reasons set forth below, the Court DENIES defendants' motions.

II. DISCUSSION

12 | A. Background

13 This case arises out of a long-term investigation into the Berrelleza drug trafficking
14 organization, large-scale drug trafficking organization with ties to a Mexican-based drug cartel.
15 The investigation yielded an indictments against thirty-four defendants in all.

16 As part of the investigation into the conspiracy, the government applied for and received
17 several orders authorizing the interception defendants' phone lines. The government first
18 applied for and received authorization to intercept the phone line of Pascual Valenzuela, a
19 member of the organization, on September 29, 2011. Thereafter, the government sought and
20 received eight subsequent orders authorizing the interception of twelve additional phone lines
21 used by defendants. Each of the government's applications was supported by an affidavit
22 prepared and executed by Nathan Clammer, Special Agent with Homeland Security
23 Investigations in Seattle, Washington, and each incorporated by reference the prior affidavits.
24 The investigation concluded on or about March 29, 2012, with the execution of several arrest

² Several other Defendants join Ortiz's motion, Dkt. # 568, 577, 580, 583, 587, 588, 589, 640, 650, as well as Berrelleza-Verduzco's motions, Dkt. # 587, 588, 589, 623, 625, 630, 640, 650, 706, 778, 779, and Magana-Guzman's motion, Dkt. # 778, 779.

28 ORDER DENYING DEFENDANTS
MOTIONS TO SUPPRESS - 2

1 warrants.

2 **B. Analysis**

3 Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-
 4 2520, authorizes the government to conduct electronic surveillance of suspected criminals, but
 5 “the government must prove necessity before it resorts to a wiretap.” United States v. Garcia-
 6 Villalba, 585 F.3d 1223, 1227 (9th Cir. 2009). In addition to demonstrating probable cause, an
 7 affidavit supporting an application for a wiretap must include “a full and complete statement as
 8 to whether or not other investigative procedures have been tried and failed or why they
 9 reasonably appear to be unlikely to succeed if tried or to be too dangerous.” 18 U.S.C. §
 10 2518(1)(c). The issuing judge may approve the wiretap if he or she finds that “normal
 11 investigative procedures have been tried and have failed or reasonably appear to be unlikely to
 12 succeed if tried or to be too dangerous.” Id. § 2518(3)(c). “This necessity requirement means
 13 that the affidavit must set out a factual background that shows that ordinary investigative
 14 procedures, employed in good faith, would likely be ineffective in the particular case.” United
 15 States v. Brone, 792 F.2d 1504, 1506 (9th Cir. 1986). The Ninth Circuit has held that while “the
 16 wiretap should not ordinarily be the initial step in the investigation, . . . law enforcement officials
 17 need not exhaust every conceivable alternative before obtaining a wiretap.” United States v.
 18 McGuire, 307 F.3d 1192, 1196-97 (9th Cir. 2002).

19 **1. TT1**

20 The Court finds that Agent Clammer’s September 29, 2011, affidavit in support of the
 21 initial wiretap met the statutory requirement of necessity. Agent Clammer submitted an 88-page
 22 affidavit setting forth the government’s earlier use of traditional investigative techniques and the
 23 limitations of those techniques in this particular case. For example, the affidavit explained that
 24 physical surveillance was difficult and dangerous because “[m]ost of the target locations are in
 25 very remote and isolated areas of Snohomish and Skagit Counties,” where unknown people and
 26 cars stand out and agents observed that members of the organization were “extremely paranoid

1 and cognizant of their surroundings.” First Affidavit of Nathan Clammer (“First Clammer
 2 Affidavit”) (Dkt. # 613-1) ¶ 119. See United States v. Commito, 918 F.2d 95, 97 (9th Cir.
 3 1990). Similarly, even though the government relied on a few confidential informants in its
 4 investigation, the affidavit explained that two of these informants were unable to provide new
 5 information about the organization’s members and future activities because they left the
 6 organization after receiving death threats from one of the leaders. Another informant had a very
 7 limited role in the overall organization and thus, would not be able to provide detailed
 8 information related to the organization’s operations. First Clammer Affidavit ¶¶ 143, 145, 178.
 9 Furthermore, the affidavit explained that using other, more actively engaged members of the
 10 organization as informants was not likely to be successful as these individuals would be
 11 expected to transport and deliver weapons or drugs, which the government could not allow. See
 12 id. ¶ 143. The affidavit also explained that the government’s use of video surveillance yielded
 13 limited results, providing information about vehicles coming and going from one member’s
 14 residence and another member’s auto-shop, but failing to provide insight into which occupants
 15 of the vehicles were engaged in illegal activity. Id. ¶¶ 127-29.

16 The affidavit further explained that search warrants were not employed because the
 17 investigating agents did not know the identities of all participants or all of the locations the
 18 organization was using to store contraband. Id. ¶ 217. Moreover, executing search warrants and
 19 interviewing individual members of the organization was likely to alert the other members to the
 20 investigation. Id. ¶¶ 217, 222. While the government had not foreclosed the possibility of using
 21 undercover agents, the affidavit explained that this tactic was unlikely to yield information
 22 beyond the general operations of the business because the high level participants were from
 23 Mexico and many of them were related. Thus, even if an undercover agent were successful in
 24 infiltrating the operation, it appeared unlikely that the agent would be able to gain sufficient trust
 25 as an outsider to uncover information about top tier participants. Id. ¶¶ 229-32.

26 Defendants contend that the government had previously used several investigatory

27 ORDER DENYING DEFENDANTS’
 28 MOTIONS TO SUPPRESS - 4

1 methods and did not show that it had exhausted those alternative means. However, as noted
2 above, the government need not pursue every possible technique before legitimately obtaining a
3 wiretap order. See McGuire, 307 F.3d at 1197. Nor does defendants' speculation that the
4 government could have recovered valuable information through other techniques acknowledge
5 the clear statements in Agent Clammer's affidavit regarding why those alternative means would
6 not suffice. The affidavit thoroughly described the results of the government's use of various
7 techniques and the obstacles those techniques presented going forward. For example, the
8 affidavit acknowledged that through toll records and pen registers it was able to identify several
9 calls between a phone belonging to the wife of Ivan Berrelleza-Verduzco ("Ivan"), a member of
10 the organization, and defendant Richard Ortiz ("Ortiz"), who was in prison at the time. First
11 Clammer Affidavit ¶¶ 241-44. During these calls, Ivan's wife and defendant Ortiz discussed
12 past drug trafficking activities. Contrary to Ortiz's contention, Dkt. # 531 at 13-14, the
13 affidavit's incorrect statement that Ortiz received calls in prison was not misleading or
14 confusing. More importantly, Ortiz does not dispute the content of these calls. The affidavit
15 also explained that the use of pen registers and billing and toll records without more was not
16 likely to achieve the goal of the investigation as those methods cannot identify the people
17 involved in conversations or the content of those conversations. First Clammer Affidavit ¶ 261.

18 Defendants also argue that the September 29, 2011, affidavit provided nothing more than
19 boilerplate statements rather than facts specific to this case. Dkt. # 531 at 12; Dkt. # 621 at 8-26;
20 see Dkt. # 658 at 1-2. Contrary to defendants' position, the Court finds that the affidavit
21 contains sufficient specificity. The affidavit described how facts particular to this investigation
22 made other means of investigation unlikely to succeed or too dangerous. Even if the Court were
23 to agree with defendants that some statements express general conclusions, "[i]n light of the
24 many assertions that are supported by specific probative facts, the few conclusory statements . . .
25 do not render the affidavit - read in its entirety in a practical and commonsense fashion - invalid
26 under § 2518(1)(c)," Commito, 918 F.2d at 98. The Court "recognizes that some language in the

27 ORDER DENYING DEFENDANTS'
28 MOTIONS TO SUPPRESS - 5

1 affidavit may be conclusory or merely describe the inherent limitations of certain investigatory
 2 techniques, but this is not decisive . . . The affidavit as a whole speaks in case-specific language,
 3 and [the Court is] persuaded that it contains a full and complete statement as to whether or not
 4 investigative procedures have been tried and failed or why they reasonable appear to be unlikely
 5 to succeed if tried or to be too dangerous.” Garcia-Villalba, 585 F.3d at 1230 (internal
 6 quotations and citations omitted).

7 Defendant Enrique Magana-Guzman (“Enrique”) argues that the government failed to
 8 make a “full and complete” showing that a wiretap was necessary, in light of the separate
 9 investigation into the Berrelleza organization in Arizona and the wiretap of a separate
 10 organization, the Juarez-Santos organization. Dkt. # 658 at 7-18. Enrique contends that Agent
 11 Clammer minimized the scope and success of the federal and state investigations in Arizona for
 12 fear that full disclosure would eliminate the need for a wiretap. Id. at 8-11. While Agent
 13 Clammer may not have provided as much detail about the government’s leads and discoveries in
 14 Arizona as defendant would like, the affidavit explained the organization’s ongoing business
 15 between Arizona and Washington, and agents’ efforts to follow up on leads in Arizona. For
 16 instance, the affidavit explained that a Phoenix detective worked with a confidential informant
 17 who provided valuable tips about the organizations’ transportation of drugs and money between
 18 Arizona and Washington. First Clammer Affidavit ¶¶ 79-86. The federal agents and state
 19 authorities followed up on these leads and conducted surveillance of several members of the
 20 organization. Defendant’s position ignores the fact that the government was conducting a large-
 21 scale investigation of the entire Berrelleza organization and its activity in several states.
 22 Furthermore, Enrique fails to explain how the investigation in Arizona decreased the necessity of
 23 a wiretap.

24 As for Enrique’s argument that the government failed to make a complete statement
 25 regarding the Juarez-Santos investigation, the Court finds this argument unconvincing. The
 26 September 29, 2011, affidavit outlined the relevant history of the separate investigation into the
 27

1 Juarez-Santos drug trafficking organization. *Id.* ¶¶ 246-57. The affidavit also described the
 2 lawful interception of calls between one of the leaders of the Berrelleza organization and
 3 members of the Juarez-Santos organization and why the wiretap in place for the Juarez-Santos
 4 investigation was insufficient for the Berrelleza investigation. *Id.* ¶¶ 252-55. Contrary to
 5 Magana-Guzman's contention, Dkt. # 658 at 17, the government was not required to exhaust this
 6 source of information before seeking a wiretap for its investigation of the Berrelleza
 7 organization. See McGuire, 307 F.3d at 1197. The Court DENIES defendants' motions to
 8 suppress evidence obtained as a result of the TT1 wiretap.

9 **2. TT5 and TT6**

10 Defendants Victor Berrelleza-Verduzco ("Victor") and Cristian Berrelleza-Verduzco
 11 ("Cristian") contend that the evidence obtained from the wiretaps on their phone lines must be
 12 suppressed because affidavits supporting the wiretaps failed to explain that other investigatory
 13 techniques were used to investigate them individually. Specifically, Cristian and Victor argue
 14 that the January 20, 2012, affidavit targeting their respective phone lines, TT5 and TT6, did not
 15 indicate that the government made any attempts to use traditional techniques to investigate them
 16 before seeking wiretaps. Dkt. # 745 at 1-4; Dkt. # 771 at 3-5. Defendants further contend that
 17 the affidavit did not incorporate by reference any other affidavit with this information. The
 18 Court disagrees.

19 Defendants are correct that "the government is not free to transfer a statutory showing of
 20 necessity from one application to another – even within the same investigation," and "[e]ach
 21 wiretap application must separately satisfy the necessity requirement." Garcia-Villalba, 585
 22 F.3d at 1231 (quoting United States v. Gonzalez, Inc., 412 F.3d 1102, 1115 (9th Cir. 2005)).
 23 However, a district court is not required to view each wiretap application in a vacuum. Id. at
 24 1232. Historical facts and earlier investigatory tactics described in previous applications,
 25 particularly within the same investigation, are almost always relevant. Id. If these facts are
 26 incorporated by reference into the most recent affidavit, the district court may rely on them. The

27 ORDER DENYING DEFENDANTS'
 28 MOTIONS TO SUPPRESS - 7

1 Ninth Circuit has determined that “the government may rely on past failed attempts to infiltrate
 2 an organization, detailed in past affidavits, as evidence that future attempts would be fruitless.”

3 Id. This is not to say that the government may rely on the fact that an earlier wiretap was
 4 necessary to justify the current application. Id. “The key question will always be whether the
 5 wiretap application separately satisfies the necessity requirement.” Id.

6 Turning to Cristian’s and Victor’s concerns that the January 20, 2012, affidavit lacked a
 7 showing of necessity as to their phone lines, the Court finds that this affidavit satisfies the
 8 necessity requirement. The January 20, 2012, affidavit expressly incorporates the earlier
 9 affidavits in their entirety. Fifth Affidavit of Nathan Clammer (“Fifth Clammer Affidavit”)
 10 (Dkt. # 699-4) ¶ 3-4. As a result, although this affidavit may not identify in detail which other
 11 investigatory techniques the government previously used to target Cristian, the government and
 12 the issuing judge reasonably relied on the detailed explanations set forth in the initial affidavit.
 13 For instance, the issuing judge was able to find that confidential informants were not likely to
 14 yield helpful information going forward based on the September 29, 2011, affidavit’s detailed
 15 explanation of the government’s use of confidential informants to gain information about
 16 Cristian and the limitations encountered with respect to that particular strategy. First Clammer
 17 Affidavit ¶¶ 31-34, 61-64, 69, 79-86, 143-64, 178.

18 In addition, the September 29, 2011, affidavit detailed the government’s physical and
 19 other electronic surveillance of Cristian, id. ¶¶ 44-45, 69, 115, its use of toll analysis and pen
 20 registers of Cristian’s phone and why those methods were not as successful in this particular
 21 investigation, id. ¶¶ 212, 259-62, and its monitoring of calls between Cristian and members of
 22 the organization who were in immigration custody and the inherent limitations in that technique
 23 once the members got out of detention, id. ¶¶ 235-40. The affidavit also noted that more
 24 common investigatory techniques were unlikely to yield helpful information about Cristian
 25 because he was particularly paranoid about police. See id. ¶¶ 69, 201-11. Because the January
 26 20, 2012, affidavit incorporated by reference the initial affidavit, the Court finds that the

27 ORDER DENYING DEFENDANTS’
 28 MOTIONS TO SUPPRESS - 8

1 government made a sufficient showing of necessity to support the wiretap application of TT5.

2 See Garcia-Villalba, 585 F.3d at 1231.

3 With respect to Victor and TT6, the January 20, 2012, affidavit explained the other
4 investigatory methods the government used in its investigation of him. For instance, this
5 affidavit explained in significant detail the government's physical surveillance of Victor during
6 what Agent Clammer suspected was the early stages of a robbery of a rival organization's house.
7 Fifth Clammer Affidavit ¶¶ 45-56. After agents saw Victor's car in a parking lot, they attached a
8 GPS device to Victor's car and eventually performed a search of the target residence with
9 consent from a resident. Id. In addition, other affidavits incorporated by reference described the
10 government's continued surveillance efforts. See e.g., Fourth Affidavit of Nathan Clammer
11 ("Fourth Clammer Affidavit") (Dkt. # 699-3) ¶ 162. The January 20, 2012, affidavit also
12 described the counter-surveillance measures that Victor took, which made it unlikely that
13 surveillance would produce results that would meet the goals of the investigation. Fifth
14 Clammer Affidavit ¶ 55.

15 The Court finds that the government established necessity for the wiretap with regard to
16 TT5 and TT6 in the context of its investigation of the entire drug trafficking organization. See
17 United States v. Reed, 575 F.3d 900, 911-12 (9th Cir. 2009) ("As with probable cause, the
18 government has no duty to establish necessity as to each possible interceptee. It is sufficient that
19 there was necessity to tap the phone.") (quotations omitted). Thus, defendants' motions to
20 suppress evidence obtained through wiretaps on TT5 and TT6 are DENIED.

21 **3. TT8 and TT10**

22 Victor and Cristian also argue that the government's affidavits supporting the wiretap
23 applications for their other phones, TT8 and TT10 respectively, fail to show necessity as to them
24 individually. Defendant Juan Carlos Lugo-Acosta also objects to the admission of
25 communications intercepted on TT8 on the basis that the affidavit fails to show that the
26 government attempted to use traditional means to investigate Victor.

27 ORDER DENYING DEFENDANTS'
28 MOTIONS TO SUPPRESS - 9

1 After the government received authorization to intercept communications on TT5 and
2 TT6 in January 2012, agents observed both a decline in the use of those phones and the presence
3 of two new phones, TT8 and TT10, which were being used by Victor and Cristian. Sixth
4 Affidavit of Nathan Clammer (“Sixth Clammer Affidavit”) (Dkt. # 699-5) ¶¶ 19-22; Eighth
5 Affidavit of Nathan Clammer (“Eighth Clammer Affidavit”) (Dkt. # 699-7) ¶¶ 19-24. The
6 government subsequently sought authorization to intercept communications on TT8 and TT10.
7 In the affidavits supporting these wiretaps, the government incorporated by reference its prior
8 affidavits. Sixth Clammer Affidavit ¶¶ 3-4; Eighth Clammer Affidavit ¶¶ 3-4. In the February
9 11, 2012, affidavit supporting the wiretap of TT8, the government explained that the government
10 intercepted a call during which Cristian instructed Victor to purchase a container in which they
11 could burn their trash. Sixth Clammer Affidavit ¶ 75. The affidavit also explained that physical
12 surveillance and analysis of cell phone tower hits revealed the location of a new stash house. Id.
13 While surveilling the new stash house, the government saw a fire in the backyard. Id. The
14 results of these investigatory efforts further supported the government’s earlier statements that
15 other techniques, such as trash analysis, would be unsuccessful in achieving the goals of the
16 investigation. Similarly, the February 24, 2012, affidavit supporting the wiretap of TT10
17 explained the government’s recent surveillance of Cristian, the installation of a video camera
18 near the new stash house, and the limitations of those two surveillance tactics. Eighth Clammer
19 Affidavit ¶¶ 61-62. These updates, combined with the government’s previous statements of
20 necessity, were sufficient to establish “case-specific” necessity with respect to TT8 and TT10.
21 See Garcia-Villalba, 585 F.3d at 1231.

22 Victor makes a final argument that the wiretap affidavits supporting applications for TT6
23 and TT8 did not demonstrate probable cause. Dkt. # 768 at 6-7. He argues that the section
24 entitled “Probable Cause for Voice Interception of TT6” was insufficient to establish probable
25 cause that Victor either committed a crime or was about to commit a crime. This argument is
26 not persuasive.

27 ORDER DENYING DEFENDANTS'
28 MOTIONS TO SUPPRESS - 10

1 For the government to receive authorization for a wiretap, there must be “probable cause
 2 to believe that the telephone is being used to facilitate the commission of a crime.” United
 3 States v. Reed, 575 F.3d 900, 910 (9th Cir. 2009). Here, the affidavits supporting the
 4 interception of TT6 and TT8 described a grand-scale drug trafficking organization and identified
 5 specific facts indicating that Victor was involved. The January 20, 2012, affidavit described
 6 calls between Victor and defendant Juan Magana-Guzman (“Juan”) during which the two men
 7 discussed the amount and weight of something that Magana delivered to a suspected drug dealer.
 8 During one call, the two discussed whether the scale they were using to measure the substance
 9 was accurate. Fifth Clammer Affidavit ¶ 74. In addition, although not explained in the section
 10 entitled “Probable Cause,” the affidavit described telephone calls between Juan and Victor
 11 during which they appeared to be organizing people and seeking “devices,” to attempt to rob a
 12 rival drug organization. When read in conjunction with the descriptions of calls between Juan
 13 and others, e.g., id. ¶ 37, Victor’s intercepted conversations with Juan demonstrated probable
 14 cause that he was involved in the drug trafficking organization. Additionally, the affidavit
 15 explained that through intercepted calls, physical surveillance, and use of a GPS device, the
 16 government discovered that Victor and Juan were preparing to follow the wife of a leader of a
 17 rival organization and rob one of that organization’s stash house. Id. ¶¶ 45-56. A later search of
 18 the suspected target house revealed \$32,000 in cash in two shoe boxes, a number of one dollar
 19 bills throughout the house, and a .45 caliber pistol hidden between the mattresses in the master
 20 bedroom. Id. ¶ 53.

21 **4. Franks Hearing**

22 Defendants request that the Court conduct a hearing pursuant to Franks v. Delaware, 438
 23 U.S. 154 (1978). Franks held that “where the defendant makes a substantial preliminary
 24 showing that a false statement knowingly and intentionally, or with reckless disregard for the
 25 truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is
 26 necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be

held at the defendant's request." 438 U.S. at 155-56. Franks set forth a rule of limited scope; a defendant is entitled to a Franks hearing "only if he makes a two-fold showing: intentional or reckless inclusion or omission, and materiality." United States v. Bennett, 219 F.3d 1117, 1124 (9th Cir. 2000). A false inclusion or an omission is considered material if the affidavit, purged of its defects, would not be sufficient to support a finding of probable cause or necessity. Id.

Defendants fail to meet this burden in requesting a Franks hearing. Defendants contend that the affidavits' omission of facts regarding other investigative procedures requires the Court to hold a Franks hearing. See Dkt. # 658 at 3; Dkt. # 621 at 30-31. This does not amount to a substantial showing of actual and deliberate falsity. See United States v. Prime, 431 F.3d 1147, 1150 n.1 (9th Cir. 2005).

"To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine." Franks, 438 U.S. at 171. Because there is a presumption of validity with respect to the affidavits, id., the affiant's statements are deemed trustworthy absent any information indicating otherwise. There appears to be some disagreement among the parties about the requisite showing defendants must make to be entitled to a Franks hearing. While the case law does not require "clear proof of deliberate or reckless omissions or misrepresentations," defendants must "make a substantial showing that supports a finding of intent or recklessness." United States v. Gonzalez, Inc., 412 F.3d 1102, 1111 (9th Cir. 2005). In Gonzalez, Inc., for example, defendants made the requisite preliminary showing for a Franks hearing by filing 100 pages of attachments supporting their contentions that the wiretap affidavits intentionally misrepresented the potential benefits of traditional investigatory techniques. Id. at 1110-11.

Here, Defendants' "disbelief" and curiosity regarding agents' intentions "does not amount to the substantial showing required under Franks." United States v. Meling, 47 F.3d 1546, 1554 (9th Cir. 1995). Victor's suggestion that he "is entitled to a Franks hearing to determine whether the application contained material misstatements and omissions (sic), and if so whether these

ORDER DENYING DEFENDANTS'
MOTIONS TO SUPPRESS - 12

1 misstatements and omissions worked to conceal the fact that the wiretap was not necessary,”
 2 Dkt. # 621 at 30 (internal quotations and alterations omitted), ignores the fact that a hearing
 3 cannot be triggered on the face of the pleadings alone. See United States v. Chavez-Miranda,
 4 306 F.3d 973, 979 (9th Cir. 2002) (“Chavez-Miranda offers no evidence . . . to support the claim
 5 that the omissions were reckless or intentionally misleading.”).

6 Ortiz also contends that the error in the affidavit regarding the direction of the calls
 7 between Ortiz and Ivan’s wife require a Franks hearing because the mistake was designed to be
 8 misleading. Dkt. # 531 at 14-15. As noted above, conclusory allegations such as this are
 9 insufficient to trigger a hearing. More significantly, the mistake regarding the direction of the
 10 calls was not misleading. The Court is well aware that a federal prisoner may not receive calls
 11 while in detention. Thus, the Court finds that this minor error was neither misleading nor
 12 material.

13 III. CONCLUSION

14 For all of the foregoing reasons, defendant Richard Anthony Ortiz’s “Motion for Order
 15 Suppressing Wiretap Evidence or, Alternatively Setting Evidentiary Hearing Pursuant to Franks
 16 v. Delaware” (Dkt. # 531), defendant Victor Berrelleza-Verduzco’s “Motion to Suppress
 17 Intercepted Wire Communications and in the Alternative, for Franks Hearing” (Dkt. # 584) and
 18 “Motion and Memorandum Re: Suppression of Intercepted Wire Communications for Lack of
 19 Probable Cause” (Dkt. # 768), defendant Enrique Magana-Guzman’s “Motion to Suppress
 20 Wiretap Evidence and for Evidentiary Hearing Pursuant to Franks v. Delaware” (Dkt. # 658),
 21 defendant Juan Carlos Lugo-Acosta’s “Motion to Suppress Intercepted Wire Communications
 22 and Request for a Franks Hearing” (Dkt. # 760), and defendant Cristian Berrelleza-Verduzco’s
 23 “Motion and Memorandum to Suppress Evidence Obtained by Unlawful Interception of
 24 Telephonic Communications” (Dkt. # 771) are DENIED.

25
 26
 27 ORDER DENYING DEFENDANTS’
 28 MOTIONS TO SUPPRESS - 13

1 DATED this 11th day of April, 2013.
2
3
4



5 Robert S. Lasnik
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER DENYING DEFENDANTS'
MOTIONS TO SUPPRESS - 14